

Chapter 16.1

EROSION AND SEDIMENT CONTROL*

Editor's note Ch. 16, Erosion and Sediment Control, was repealed by Ord. No. O-93-039, adopted 2-9-93, and was replaced by Ch. 16.1.

Sec. 16.1-1. Purpose.

The purpose of this chapter is to conserve the land, water, air and other natural resources of the City of Lynchburg and promote the public health and welfare of the people in the city by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced. These procedures will apply to any land disturbing activity as done by government and private entities in the City of Lynchburg. (Ord. No. O-93-039, 2-9-93)

Sec. 16.1-2. Authority for chapter.

This chapter is authorized by the Code of Virginia, 1950, as amended, Title 10.1, Chapter 5, Article 4, (10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law. (Ord. No. O-93-039, 2-9-93)

Sec. 16.1-3. Terms beginning with "A" through "C".

As used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

(a) Agreement in lieu of a plan: means a contract between the plan approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

(b) Applicant: Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.

(c) Board: The Virginia Soil and Water Conservation Board, created under Sec. 10.1-502, Code of Virginia.

(d) Certified inspector: means an employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of project inspection or (ii) is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.

(e) Certified plan reviewer: means an employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of plan review, (ii) is enrolled in the board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or landscape surveyor pursuant to Article 1 (§ 54.1-400 et. seq.) of Chapter 4 of Title 54.1.

(f) Certified program administrator: means an employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of program administration or (ii) is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

(g) Channel: A natural stream or manmade waterway.

(h) City: The City of Lynchburg.

***Cross references**—Buildings, Ch. 11; nuisances, Ch. 26; planning, Ch. 30; zoning, Ch. 35.1.

(i) Clearing: Any activity which removes the vegetative ground cover including, but not limited to, root mat removal and/or topsoil removal.

(j) Conservation plan, erosion and sediment control plan, or plan: A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water control plan inventory, and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives. It shall also address the stormwater management criteria as specified by this chapter. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-4. Terms beginning with “D” through “F”.

As used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

(a) Denuded: A term applied to land that has been physically disturbed and presently does not supports vegetative cover.

(b) Development: A tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or contained within a subdivision for residential dwelling units.

(c) District or soil and water conservation district: A political subdivision of the commonwealth organized in accordance with the provisions of Article 3, Sec. 10.1-506 et. seq., Chapter 5, of the Code of Virginia.

(d) Dormant: Denuded land not actively being brought to a desired grade or condition.

(e) Erosion impact area: An area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of one thousand (1000) square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

(f) Excavating: Any digging, scooping or other methods of removing earth materials. (g) Filling: Any depositing or stockpiling of earth materials.

(h) Floodplain: Those areas adjoining a river, stream, channel, ocean, bay or lake which are likely to be covered by flooding. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-5. Terms beginning with “G” through “K”.

(a) Governing body: The council of the City of Lynchburg.

(b) Grading: Any excavating or filling with earth materials or any combination thereof, including the land in its excavated or filled condition.

(c) Inspection: An on-site review of compliance with the approved plan, and any applicable design criteria. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-6. Terms beginning with “L” through “O”.

(a) Land disturbing activity: Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

(1) Minor land disturbing activities such as home gardens and individual home landscaping, repair and maintenance work;

- (2) Individual service connections;
- (3) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk provided such land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas;
- (7) Tilling, planting or harvesting of agricultural, horticultural or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with Chapter 11 (§ 10.1-1100 et. seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;
- (8) Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Chapter 8.1 (Sec. 62.1-115.1 et. seq.), ditches, strip cropping lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
- (9) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (11) Shore erosion control projects on projects on tidal waters when the projects are approved by local wetlands boards, the Marine Resources Commission or the U.S. Army Corps of Engineers;
- (12) Emergency work to protect life, limb, or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the city engineering division;
- (13) Disturbed land areas of less than one thousand (1,000) square feet in size.

Best management practices will be encouraged to all exceptions to land disturbing activity.

(b) Land disturbing permit: A permit issued by the city for the clearing, filling, excavating, grading, or transferring, or any combination thereof, or for any purpose set forth herein.

(c) Licensed Design Professional: A professional engineer, land surveyor III B, or landscape architect certified and licensed by the Commonwealth of Virginia.

(d) Local erosion and sediment control program or local control program: An outline or explanation of the various elements or methods employed by the city to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinance, policies and guidelines, technical materials, inspection, enforcement and evaluation.

(e) Locality: The City of Lynchburg.

(f) Owner: The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-7. Terms beginning with “P” through “R”.

As used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

(a) Permittee: The person to whom the permit authorizing land disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

(b) Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the commonwealth, any interstate body, or any other legal entity.

(c) Plan approving authority: The city's certified plan reviewer is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of land and for approving plans.

(d) Post-development: Conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

(e) Pre-development: Conditions existing at the time the erosion and sediment control plan is submitted to the plan approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

(f) Program authority: means a district, county, city or town which has adopted a soil erosion and sediment control program which has been approved by the board.

(g) Runoff: That portion of precipitation that is discharged across the land surface or through conveyances to one (1) or more waterways. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-8. Terms beginning with “S” through “Z”.

(a) Single-family residence: A noncommercial dwelling that is occupied exclusively by one (1) family and not part of a residential subdivision development.

(b) Stabilized: An area expected to withstand normal exposure to atmospheric conditions without incurring erosion damage.

(c) State erosion and sediment control program or state program: The program administered by the Virginia Soil and Water Conservation Board pursuant to the state code including regulations designed to minimize erosion and sedimentation.

(d) State waters: All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.

(e) Subdivision: Division of any tract, parcel or lot of land into two (2) or more parts at one time or any extended period of time; except, however:

(1) The term “subdivision” shall not include the division of land into ten (10) acres or more for agricultural purposes, provided no new streets are required;

(2) The agent may, however, permit the separation of one (1) parcel from a tract of land without complying with all requirements of this chapter if it is (a) not in conflict with the general meaning and purpose of the chapter, and (b) no new streets are required to serve the parcel; and

(3) The word “subdivide” and any derivative thereof shall have reference to the term “subdivision” as defined in Section 24.1-5(26) of the subdivision ordinance.

(f) Transporting: Any moving of earth materials from one place to another place, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-9. Local erosion and sediment control program.

(a) The City of Lynchburg adopts the regulations promulgated by the Virginia Soil and Water Conservation Board pursuant to section 10.1-562 of the Code of Virginia for the effective control of soil erosion, sediment deposition and nonagricultural runoff to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. The Virginia Erosion and Control Regulations, The Virginia Erosion and Sediment Control Handbook, as amended, and the Lynchburg Erosion and Sediment Handbook, are adopted as the standards, reference and guidelines for the local program. The standards and amendments contained within these publications are to be used by the applicant when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. The plan approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the state regulations shall take precedence.

(b) Any erosion and sediment plan submitted for review must address stormwater management in accordance with the Lynchburg Stormwater Ordinance, Chapter 16.2.

(c) Violators of this chapter shall be deemed guilty of a class 1 misdemeanor for each violation. In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the City of Lynchburg in a civil action for damages. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land disturbing activities without an approved plan as provided in Sec.16.1-10(a) shall be \$1000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3000 except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. Adoption of such an ordinance providing that violations are subject to civil penalties. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-10. Regulated land disturbing activities.

(a) Except as provided herein, no person shall engage in any land disturbing activity until he has submitted to the department of community planning & development an erosion and sediment plan for land disturbing activity and such plan has been approved by the plan approving authority. Where land disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the board for review and approval rather than each jurisdiction concerned. Where land disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan approving authority.

(b) The plan shall be acted upon within thirty (30) days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When a plan is determined to be inadequate, the plan approving authority shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken within thirty (30) days, the plan shall be deemed approved and the applicant authorized to proceed with the proposed activity.

(c) An approved plan may be changed by the plan approving authority when:

- (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
- (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

No changes may be made to an approved plan without review and written approval by the plan approving authority. The plan shall be acted upon within fifteen (15) days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When a plan is determined to be inadequate, the plan approving authority shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken within fifteen (15) days, the plan shall be deemed approved and the applicant authorized to proceed with the proposed activity.

(d) In order to prevent further erosion, the administrator may require approval of a conservation plan for any land identified in the local program as an erosion impact area.

(e) When land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-11. Administrative procedures: conditions of approval.

Each plan approved by a locality shall be subject to the following conditions:

(a) The applicant shall comply with all applicable requirements of the approved plan, the local program, these regulations and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan. Certification by a licensed design professional is required for all land disturbing activities where it is anticipated that the effects of erosion will have a significant detrimental impact on adjacent properties. It is the responsibility of the licensed design professional to insure that the plan meets or exceeds all the criteria outlined in this chapter.

(b) The land development project shall be conducted only within the area specified in the approved plan.

(c) The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.

(d) No transfer, assignment or sale of the rights granted by virtue of an approved plan shall be made unless a written notice of transfer is filed with the locality and the transferee certifies agreement to comply with all obligations and conditions of the approved plan. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-12. Administrative procedures: exceptions.

(a) A request for an exception shall be submitted, in writing, to the locality. An exception from the erosion and sediment control regulations may be granted, provided that: (1) exceptions to the criteria are the minimum necessary to afford relief, and (2) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so the purpose and intent of the Erosion & Sediment Control Plan is preserved.

(b) Economic hardship is not sufficient reason to grant an exception from the requirements of these regulations. (Ord. No. O-93-039, 2-9-93)

Sec. 16-13. Land-disturbing permits; fees; bonding; and maintenance agreement.

(a) No person shall engage in any land disturbing activity until he has acquired a land disturbing permit, and has paid the fees and posted the required bond, unless the proposed land disturbing activity is specifically exempt from the provisions of this chapter.

(b) Fees: A plan review fee and inspection fee for (1) one and two-family residential development of fifty dollars (\$50.00) per acre and (2) multi-family/commercial/industrial development of one hundred and fifty dollars (\$150.00) per acre, not to exceed five thousand dollars (\$5,000.00), paid to the city at the time of filing erosion and sediment control plans..

(c) No land disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed. An approved plan is required for issuance of grading, building or other permits.

(d) Bond: All applicants for permits shall provide to the city a performance bond with surety, cash escrow, or an irrevocable letter of credit equal to the amount necessary to implement and maintain all approved erosion and sediment control measures, including stormwater control measures in accordance with the Lynchburg Stormwater Ordinance, Chapter 16.2 on the approved plan. The city reserves the right to use this performance bond, cash escrow, or letter of credit to implement these measures should the applicant fail within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land disturbing activity. Should it be necessary for the city to take such conservation action, the city may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of the achievement of adequate stabilization, as determined by the department of community planning and development, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements of such permits. (Ord. No. O-93-039, 2-9-93; Ord. No. O-00-105, introduced 5-9-00, adopted 5-23-00, eff. 7-1-00; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-14. Monitoring, reports, and inspections.

(a) The program administrator or his designee shall provide for and/or conduct periodic inspections of the land disturbing activity and may require monitoring and reports from the person responsible for carrying out the plan to assure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, occupier or operator shall be given an opportunity to accompany the inspector. If the administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter and, upon conviction, shall be subject to the penalties provided by the chapter.

(b) Upon receipt of a sworn complaint of violation of this chapter, the program administrator or his designee either may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this chapter. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit

court of Lynchburg. If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the order, the administrator or his designee may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or land records of the locality in which the site is located. The owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the Lynchburg circuit court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the administrator from taking any other action authorized by this chapter. (Ord. No. O-93-039, 2-9-93; Ord. No. O-01-080, 4-24-01, eff. 5-1-01)

Sec. 16.1-15. Penalties, injunctions and other legal actions.

- (a) Violators of this chapter shall be deemed guilty of a class 1 misdemeanor for each violation.
- (b) The City of Lynchburg may apply to the circuit court of the city of Lynchburg to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that an adequate remedy at law does not exist.
- (c) In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the City of Lynchburg in a civil action for damages.
- (d) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000) for each violation.
- (e) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the City of Lynchburg may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in paragraph (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under paragraph (d).
- (f) The city attorney shall, upon request of the city, take legal civil action to enforce the provisions of this chapter.
- (g) Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages. (Ord. No. O-93-039, 2-9-93)

Sec. 16.1-16. Administrative appeal; judicial review.

- (a) Final decisions of the administrator under this chapter shall be subject to review by the city board of adjustments and appeals, provided an appeal is filed within thirty (30) days from the date of any written decision by the administrator which adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.
- (b) Final decisions of the city board of adjustments and appeals under this chapter shall be subject to review of the circuit court of the city; provided an appeal is filed within thirty (30) days from the date of the final written decision which adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities. (Ord. No. O-93-039, 2-9-93)

Sec. 16.1-17. Self-imposed restrictions.

The subdivider may place restrictions on the development greater than the provisions of this chapter or the city zoning ordinance. Such restrictions, if any, shall be indicated on the subdivision plat. (Ord. No. O-93-039, 2-9-93)

Sec. 16.1-18. Projects commenced before adoption of conservation standards not affected.

Nothing in this chapter shall affect any project commenced prior to the adoption of this chapter. (Ord. No. O-93-039, 2-9-93)

